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'Three strikes' changes sought

Los Angeles DA wants a ballot measure to clarify the rules for felonies that trigger life terms.

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Los Angeles County District Attorney Steve Cooley is proposing to soften the state's "three-strikes" law with a ballot initiative that would eliminate likely life terms unless the third conviction came on a "serious" or "violent" offense.

Cooley's proposal, now under review by the state attorney general's office, would basically mirror the policy he uses to sort through three-strikes cases in Los Angeles. During his first two years on the job, Cooley's three-strikes changes cut the number of 25-to-life sentences in the county by more than half.

His initiative would retain the prospect of life sentences for offenders whose third conviction came on a relatively minor felony such as drug possession or petty theft with a prior, the most controversial aspect of California's three-strikes law. But in such cases, 25-to-life terms could be triggered only if those defendants had a prior conviction involving sexual violence, homicide, child molestation or any offenses punishable by life imprisonment.

Certain other types of felonies not classified under current law as "serious" or "violent" also would still trigger life sentences under Cooley's three-strikes revision. They include convictions involving major quantities of drugs, any sex felonies, convictions in which the offender used or was armed with a firearm or deadly weapon, or in cases where the conduct was likely to cause great bodily injury.

Joining Cooley in co-authoring the initiative was attorney Brian T. Dunn, a member of the Los Angeles law firm headed by the famed late civil rights and defense attorney Johnnie Cochran.

"It's quite a momentous occasion to have the district attorney of the largest county in the state and a lawyer with the Johnnie Cochran firm jointly submitting an initiative," said Lael Rubin, a deputy prosecutor in the Los Angeles District Attorney's Office who once headed its three-strikes unit and is now in charge of its appeals division. "They are both interested in preserving the best parts of the three-strikes law and interested in dispensing justice fairly."

Cooley declined through a spokeswoman to comment on the initiative, and another spokesman for the Los Angeles prosecutor declined to comment on how Cooley plans to get the measure on the ballot.

Dunn said that with the initiative, "We're hoping to bring the law in line with what the voters intended."

"In order for the law to be effective, the punishment must fit the crime," Dunn added. "I really applaud the courage of the L.A. District Attorney's Office on this."

Under California's version of the three-strikes law, more than 7,700 inmates who had two prior serious or violent felony convictions and then went on to pick up a third felony conviction of any sort are now serving 25-to-life terms, according to the Department of Corrections and Rehabilitation's June 30 figures.

Of those inmates, about 3,300 were in prison for crimes against people, 2,300 picked up life sentences for property offenses that triggered the three-strikes term, about 1,300 were in on drug convictions and the rest were for an assortment of other crimes, including weapons possession.

All of the three-strikes inmates whose triggering offenses were neither serious nor violent would qualify for a new sentencing hearing under Cooley's initiative.

California's three-strikes law was passed by the Legislature in 1994 and approved that year by more than 70 percent of the state's voters. Opponents of the law put a measure on the ballot in 2004, Proposition 66, that would have required the triggering offense to be either serious or violent. The measure lost by 53.4 percent to 46.6 percent.

Dave LaBahn, executive director of the California District Attorneys Association, said the state prosecutors organization is looking over the proposal that was submitted last week and has yet to take a position on it.

Assemblyman Mark Leno, D-San Francisco, introduced a bill last year that sought to change the three-strikes law along the lines proposed by Cooley. The district attorneys association opposed the bill, and Leno eventually withdrew it.

Leno, a supporter of Proposition 66 in 2004, said he hasn't had a chance to thoroughly review the Cooley initiative.

"The question here is," Leno said, "is some improvement better than none?"

The assemblyman said he pushed in meetings with a working group that included Cooley and other district attorneys to drop burglary convictions as third-strike felonies and to apply the revision to tens of thousands additional "two-strike" offenders whose terms were doubled under the 1994 legislation.

"More succinctly put, this is a debate between the perfect and the good," Leno said.

McGeorge School of Law professor Michael Vitiello, another three-strikes opponent, called the Cooley proposal "a good step forward."

"We can always argue at the margin," Vitiello said. "But Cooley has distinguished himself among prosecutors for taking a rational position on three strikes early on, and this is a good step."

Ray McNally, the political consultant whose firm organized the opposition to Proposition 66 in 2004, said the Cooley measure "seems consistent with the intent of the three-strikes initiative the voters passed (in 1994)."

But McNally, whose clients include the state's correctional officers union as well as some of California's leading victims rights groups, said the proposal needs to be thoroughly reviewed to determine its impact on public safety.

"The people of California want to get serious, habitual and violent criminals off the street, and that is the bottom line," McNally said. "If they decide this will keep serious, violent and habitual criminals off the street, then they'll support it. If it's found it will create a loophole to allow people who should remain in prison back on the street, this will be defeated."

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